

Marianne T. O'Toole,
Chapter 7 Trustee
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Pine Bush Capital LLC,

Chapter 7
Case No. 23-35468 (CGM)

Debtor.

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TRUSTEE'S MOTION TO DISMISS CHAPTER 7 CASE UNDER 11 U.S.C. §707(a)

Marianne T. O'Toole, the Trustee in the above-captioned case, respectfully submits this Motion, together with the Trustee's Affirmation in support of the Trustee's motion to dismiss this case, pursuant to 11 U.S.C. §707(a).

I. INTRODUCTION

The Debtor filed a Chapter 7 petition on June 6, 2023 (the "Petition Date"). Incomplete filings were noted on the docket on June 6, 2023. The Petition was filed by the Debtor LLC *pro se* and not by counsel.

By Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors and Deadlines (the "Notice"), the §341(a) First Meeting of Creditors (the "Meeting") was scheduled to be held on July 6, 2023.

Neither a representative of, nor attorney for, the Debtor appeared as required by 11 U.S.C. §343, at the meeting of creditors held pursuant to 11 U.S.C. §341(a) scheduled to be held by telephone on July 6, 2023 or thereafter on the adjourned hearing date of August 3, 2023. In addition, Debtor has failed to file the required Schedules D, E/F, G, H, Summary of Assets and Liabilities, Statement of Financial Affairs, Declaration of Schedules, and Corporate Ownership

Statement (the “Required Schedules and Statements”), making it impossible to diligently inquire about the debtor’s financial affairs and the location of potential estate property.

II. ARGUMENT

There is Cause to Dismiss the Case under 11 U.S.C. § 707(a)

Section 707(a) provides, inter alia, that the “court may dismiss a case under this chapter only after a hearing and only for cause, including – (1) unreasonable delay of the debtor that is prejudicial to creditors.” 11 U.S.C. § 707(a)(1). “Section 707(a) is quite broad in that it permits dismissal for cause . . . [and] is geared toward maintaining the integrity of the bankruptcy process.” In re Keobapha, 279 B.R. 49, 54 (Bankr. D. Conn. 2002) (quoting In re Motaharnia, 215 B.R. 63, 67 (C.D. Cal. 1997).

In this case, neither a representative of, nor attorney for, the Debtor appeared as required by 11 U.S.C. §343, at the meeting of creditors held pursuant to 11 U.S.C. §341(a) scheduled to be held on July 6, 2023 or thereafter on the adjourned hearing date of August 3, 2023. In addition, Debtor has failed to file the Required Schedules and Statements, making it impossible to diligently inquire about the debtor’s financial affairs and the location of potential estate property.

The Debtor has failed to obtain counsel and the Trustee has not been contacted by an acceptable agent on behalf of the Debtor concerning the Debtor’s representation in this matter. It is axiomatic that corporations must be represented by counsel in order to appear in a bankruptcy case. *See Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20, 22 (2d Cir. 1983); *see also, In re: Victor Publishers, Inc.*, 545 F.2d 285, 286 (1st Cir. 1976) (quoting *Brandstein v. White Lamps, Inc.*, 20 F. Supp. 369 (S.D.N.Y. 1937)). Such a bar on pro se participations extends to limited liability companies. *See In re ICLNDS Note Acquisition, LLC*, 259B.R.289, 294 (Bankr. N.D. Ohio 2001); *see generally, See* 10 Collier on Bankruptcy ¶9010.08, p. 9010-5 (rev. 15th ed. 2008).

On this basis, the Court should order dismissal of the Debtor's case under 11 U.S.C. § 707(a).

III. CONCLUSION

WHEREFORE, the Trustee requests that the Court enter an order dismissing this chapter 7 case for cause under 11 U.S.C. § 707(a).

Dated: Bedford Hills, NY
August 15, 2023

By: /s/ Marianne T. O'Toole, as Trustee
MARIANNE T. O'TOOLE, as Trustee
of the Estate of Pine Bush Capital LLC
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